

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

UNITED STATES OF AMERICA)
)
 v.)
)
 KATHY ANN CHO)
 _____)

DOCKET NO. 1:19CR **39**

FACTUAL BASIS

NOW COMES the United States of America, by and through R. Andrew Murray, United States Attorney for the Western District of North Carolina, and hereby files this Factual Basis in support of the plea agreement filed simultaneously in this matter.

This Factual Basis does not attempt to set forth all of the facts known to the United States at this time. This Factual Basis is not a statement of the defendant, and, at this time, the defendant may not have provided information to the United States about the offenses to which the defendant is pleading guilty, or the defendant's relevant conduct, if any.

By their signatures below, the parties expressly agree that there is a factual basis for the guilty plea(s) that the defendant will tender pursuant to the plea agreement. The parties also agree that this Factual Basis may, but need not, be used by the United States Probation Office and the Court in determining the applicable advisory guideline range under the *United States Sentencing Guidelines* or the appropriate sentence under 18 U.S.C. § 3553(a). The defendant agrees not to object to any fact set forth below being used by the Court or the United States Probation Office to determine the applicable advisory guideline range or the appropriate sentence under 18 U.S.C. § 3553(a) unless the defendant's right to object to such particular fact is explicitly reserved below. The parties' agreement does not preclude either party from hereafter presenting the Court with additional facts which do not contradict facts to which the parties have agreed not to object and which are relevant to the Court's guideline computations, to 18 U.S.C. § 3553 factors, or to the Court's overall sentencing decision.

As set forth in more detail below, between September 19, 2013 and May 30, 2017, Kathy Ann Cho purchased approximately 35.10 pounds of green wild American ginseng roots from an undercover United States Fish & Wildlife Service (USFWS) special agent for \$6,640 or approximately \$189 per pound. The special agent also documented the sale of 2.78 pounds of green wild American ginseng roots by Cho for \$1,150 or approximately \$414 per pound.

Additionally Cho purchased thirteen (13) black bear gallbladders for \$5,200 or \$400 each. Cho also sold one (1) black bear gallbladder for \$1,000.

Lacey Act Violations

The Lacey Act, 16 U.S.C. § 3371 *et seq.*, makes it an offense, among other things, to transport, sell, receive, acquire or purchase wildlife, fish, or plants taken, possessed, transported or sold in violation of any law or regulation of any State if the offense involved interstate commerce

(generally transporting the wildlife, fish or plants across state lines). 16 U.S.C. § 3372(a)(2)(A). The act also prohibits the transport, sale, receipt, or purchase of any plant taken, possessed, transported or sold in violation of any law or regulation of any State that protects the plants or regulates the taking of plants without, or contrary to, required authorization or place limitations on the export or transshipment of plants. 16 U.S.C. §§ 3371(a)(2)(B).

The state of North Carolina regulates wild American ginseng (*Panax quinquefolious L.*). The North Carolina Plant Protection and Conservation Act (N.C. Gen. Stat. § 106-202.12 *et seq.*) makes it unlawful to sell, barter, trade, exchange, or offer for sale, barter, trade, exchange, or export, any protected plant except as authorized by state rules and regulations; to buy ginseng outside of a buying season and without the required documents from the person selling the ginseng; and to buy ginseng for resale or trade without a valid permit as a ginseng dealer. N.C. Gen. Stat. § 106-202.19.

As for wildlife, North Carolina law prohibits the buying or selling of wildlife, alive or dead and in whole or in part, except as otherwise authorized by law, N.C. Gen. Stat. § 113-291, and no part of any bear may be sold under the statutes. N.C. Gen. Stat. § 113-291.3(b)(4) and 113-294(a) and (c)(1).

The North Carolina and Georgia ginseng seasons for digging and buying green wild ginseng begins each year on September 1.

In the fall of 2013, the USFWS learned that Cho was engaged in selling ginseng in Georgia. Through a Cooperating Private Individual, contact was made with Cho by the USFWS.

Beginning in June 2014, an undercover USFWS special agent made contact with Cho and arranged the sale of ginseng. During this initial meeting, Cho accused the agent of being the police. During multiple subsequent meetings and recorded conversations, Cho acknowledged she was purchasing ginseng and bear gall bladders from others in North Carolina and selling both in Georgia. Cho acknowledged there was a ginseng buying season and that a ginseng dealer's license was required. She also acknowledged the purchase and sale of bear gall bladders was illegal during meetings and recorded conversations.

At various times in 2016 and 2017, Cho and the undercover special agent discussed how Cho might obtain a license to buy and sell ginseng legally, but she did not obtain one.

After multiple purchases and sales as listed below, the undercover investigation concluded on May 30, 2017. On this date, the undercover agent met with Cho at 329 Franklin Plaza in Franklin, North Carolina. Cho purchased 3 pounds of wild ginseng roots for \$600 and five (5) black bear gall bladders for \$2,000. Cho was stopped by other USFWS agents and Georgia Department of Natural Resources Rangers after she entered into Rabun County, Georgia. Cho was found in possession of the wild ginseng roots and bear gall bladders, which she had purchased from the undercover agent in North Carolina.

Cho purchased wild American ginseng roots from an undercover agent on the following dates and at the following locations:

<u>Date</u>	<u>Weight</u>	<u>Total Price</u>	<u>Location</u>
August 8, 2014	6.00 lbs.	\$ 900.00	Franklin, NC
August 28, 2014	7.00 lbs.	\$1,190.00	Franklin, NC
September 19, 2014	5.00 lbs.	\$1,150.00	Franklin, NC
September 13, 2016	4.07 lbs.	\$ 800.00	Franklin, NC
October 2, 2016	4.03 lbs.	\$ 800.00	Franklin, NC
November 5, 2016	6.00 lbs.	\$1,200.00	Franklin, NC
May 30, 2017	3.00 lbs.	\$ 600.00	Franklin, NC

Cho sold wild American ginseng roots to a Cooperating Private Individual on the following dates and at the following locations:

<u>Date</u>	<u>Weight</u>	<u>Total Price</u>	<u>Location</u>
September 19, 2013	1.00 lbs.	\$ 450.00	Suwannee, GA
May 19, 2014	0.89 lbs.	\$ 350.00	Suwannee, GA
November 7, 2016	0.89 lbs.	\$ 350.00	Duluth, GA

Cho purchased bear gall bladders from an undercover agent on the following dates and at the following locations:

<u>Date</u>	<u>Amount</u>	<u>Total Price</u>	<u>Location</u>
December 19, 2014	2 bladders	\$ 800.00	Franklin, NC
February 24, 2015	3 bladders	\$1,400.00	Franklin, NC
January 18, 2017	3 bladders	\$1,000.00	Franklin, NC
May 30, 2017	5 bladders	\$2,000.00	Franklin, NC

Cho sold a bear gall bladder to a Cooperating Private Individual on the following date and at the following location:

February 25, 2015	1 bladder	\$1,000.00	Suwannee, GA
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R. ANDREW MURRAY
UNITED STATES ATTORNEY



DAVID A. THORNELOE
ASSISTANT UNITED STATES ATTORNEY

Defendant's Counsel's Signature and Acknowledgment

I have read this Factual Basis, the Bill of Information, and the plea agreement in this case, and have discussed them with the defendant. Based on those discussions, I am satisfied that the defendant understands the Factual Basis, the Bill of Information, and the plea agreement. I hereby certify that the defendant does not dispute this Factual Basis with the exception of those facts to which I have specifically reserved the right to object, and understands that it may be used for the purposes stated above.



Fredilyn Sison, Attorney for Defendant

DATED: 5/1/19